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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,763	12/02/2003	Martin Clive-Smith	A-70132-1/ESW	4195
40461	7590	11/24/2006	EXAMINER	
EDWARD S. WRIGHT 1100 ALMA STREET, SUITE 207 MENLO PARK, CA 94025			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3781	
DATE MAILED: 11/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,763

Applicant(s)

CLIVE-SMITH ET AL.

Examiner

Harry A. Grosso

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-24, 26-36 and 38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 20-22, 24, 26-36 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The objection to the drawings has been overcome by the amendment filed September 7, 2006. The objection is withdrawn.

The rejection of claims 26, 28 and 33 under 35 U.S.C. 112, first paragraph, has been overcome by the amendment filed September 7, 2006. The rejection is withdrawn.

The rejection of claims 26, 28 and 32 under 35 U.S.C. 112, second paragraph, has been overcome by the amendment filed September 7, 2006. The rejection is withdrawn.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 33 recites bracing between the posts and/or the deck. It is unclear how the bracing extends between the deck or between the deck and what element. It is believed the intent is bracing between the posts and/or between the posts and the deck. The claim will be read as such for the purposes of this action.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20-22, 24, 26-28, 31, 34-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betjemann (3,459,326) in view of Wakano (5,388,532).

6. Regarding claims 20, 21, 24, 26 and 36, Betjemann discloses a support post of adjustable length with first and second elements having detent openings and a plurality of predetermined indexed positions (11, 11A, Figures 1 and 3), and a detent (34, 35, Figures 5, 8, 9) to hold the elements in the indexed positions for both lifting and stacking loads. Betjemann does not disclose the detent comprises a flat plate that has a flat face bearing surface. Wakano discloses a support post of adjustable length with a detent that is a flat plate with flat face bearing surfaces (54, 74, Figures 1, 2 and 4) that is inserted into openings with opposing flat surfaces for holding the post elements in indexed positions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a flat faced detent corresponding in size to a substantial portion of the post cross section and corresponding detent openings with flat sides as disclosed by Wakano in the post disclosed by Betjemann to spread the stacking and lifting loads over a larger cross section of the post elements.

7. Regarding claim 22, Betjemann discloses a transverse rail (15) and an operating element (34A, 36A) that is movable relative to the rail.

8. Regarding claim 27, Betjemann discloses a container (Figure 1) with posts retractable to reduce the cross section of the container.

9. Regarding claim 28, Betjemann discloses the container having adjustable support posts that allow the cross-sectional profile of the container to be adapted to fit through passages of limited dimensions.

10. Regarding claim 31, Betjemann discloses header portions (15 and 16) which are movable end gates (Figure 1, column 3, lines 51-53).

11. Regarding claim 34, Betjemann disclosed the posts extending upward and having transverse header beams and capture and handling fittings (20) on the upper ends of the posts.

12. Regarding claims 35 and 38, Betjemann as modified by Wakano discloses the post for a freight container with a flat faced detent as discussed above. The detent pins are of slender rectangular profile and the apertures are rectangular and of short height as taught by Wakano.

13. Claims 20-22, 24, 26-29, 32, 34-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betjemann (3,386,600) in view of Wakano.

14. Regarding claims 20, 21, 24, 26 and 36, Betjemann '600 discloses a support post of adjustable length with first and second elements having detent openings and a plurality of predetermined indexed positions (23A, 23B, Figures 3 and 4), and a detent (32, Figures 4) to hold the elements in the indexed positions for both lifting and stacking loads. Betjemann '600 does not disclose the detent has a flat face bearing surface. Wakano discloses a support post of adjustable length with a detent that is a flat plate with flat face bearing surfaces (54, 74, Figures 1, 2 and 4) that is inserted into openings with opposing flat surfaces for holding the post elements in indexed positions. It would

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have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a flat faced detent corresponding in size to a substantial portion of the post cross section and corresponding detent openings with flat sides as disclosed by Wakano in the post disclosed by Betjemann '600 to spread the stacking and support loads over a larger cross section of the post elements.

15. Regarding claim 22, Betjemann '600 discloses a transverse rail (29, 30) and an operating element (The head of detent 32) that is movable relative to the rail.

16. Regarding claim 27, Betjemann discloses a container (Figure 3) with posts retractable to reduce the cross section of the container.

17. Regarding claim 28, Betjemann discloses the container having adjustable support posts that allow the cross-sectional profile of the container to be adapted to fit through passages of limited dimensions.

18. Regarding claim 29, Betjemann '600 discloses a header of deep cross section (29, 30, Figure 3).

19. Regarding claim 32, Betjemann '600 discloses a gate (29, 30, column 4, lines 71-75) suspended from the posts with bracing between posts and the deck through the sidewalls (27, 28).

20. Regarding claim 34, Betjemann '600 disclosed the posts extending upward and having transverse header beams and capture and handling fittings (34) on the upper ends of the posts.

21. Regarding claims 35 and 38, Betjemann '600 as modified by Wakano discloses the post for a freight container with a flat faced detent as discussed above. The detent

pins are of slender rectangular profile and the apertures are rectangular and of short height as taught by Wakano.

22. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betjemann '600 and Wakano in view of Saunders (4,144,984). Betjemann '600 and Wakano disclose the invention except for discrete movable header portions mounted on the support posts as movable end gates. Saunders discloses a container with discrete movable headers mounted to support posts and movable as end gates (21, 22, Figure 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of discrete movable header portions mounted on the support posts as movable end gates as disclosed by Saunders in the container disclosed by Betjemann '600 and Wakano to provide an easy means for accessing the container deck from the end of the container without having to remove the end gate completely from the container.

Allowable Subject Matter

23. Claim 23 is allowed.

24. Claim 33 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

25. The rejection of claims 20, 21, 24-27, 29 and 35-38 under 35 U.S.C. 102(b) as being anticipated by Wakano has been overcome by the amendment filed September 7, 2006.

26. Applicant's arguments filed September 7, 2006 regarding the Betjemann references have been fully considered but they are not persuasive. Applicant argues that the Betjemann references do not disclose the detent with flat face bearing surfaces. In response the Wakano reference provides a teaching of the use of detents with flat face bearing surfaces.

Conclusion

27. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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